Chapter 4

Provisions of the Indian Constitution that are Applicable to Corporate Finance and the Business

The Constitution is a comprehensive one consisting of various provisions that affect every citizen of India. The following entries of the List I (Union List) are concerned to Corporate Finance :

37. Foreign loans.

38. Reserve Bank of India

43. Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations but not including cooperative societies.

44. Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities.

45. Banking

46. Bill of exchange, cheques, promissory notes and other like instruments.

47. Insurance

52. Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.

82. Taxes on income other than agricultural income.

85. Corporation tax

86. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies; and

Entry 24 of List II (State List)

Industries subject to the provisions of Entries 7 and 52 of List I.

Constitutional Provisions Applicable to Business

Certain provisions of the Indian Constitution are applicable to the business which were summarised under the following headings :

Economic Importance

I. The preamble of the Indian Constitution guarantees to its every citizen :

(i) Economic justice.—The Indian Constitution laid down social, economic and political justice to every citizen in the country. It is, therefore, the duty of the business organisations to provide social, economic and political justice to every citizen.

(ii) Liberty of thought, expression, belief, faith and worship.—This has been accepted in our constitution that every citizen has liberty of thought, expression, belief, faith and worship. According to this concept every business organisation should have liberty of thought, expression etc., with everyone.

(iii) Equality of status and of opportunity.—According to this concept every businessman should believe and give equal opportunity to others. This can be achieved through eradication of poverty. This does not mean winning gap between the poor and rich.

II. Fundamental Rights and Business

The Indian Constitution incorporates a list of Fundamental Rights and guarantees their inviolability by executive and legislative authorities. Part III (Articles 12—35) deals with the Fundamental Rights granted to individuals. These rights were finalised by the committee of the Constituent Assembly headed by Sardar Vallabhbhai Patel.

The Fundamental Rights are superior to ordinary laws; they can be altered only through constitutional amendments. Originally, the Fundamental Rights were seven but in 1978, through the 44th Amendment of the Constitution, the Right to Property was removed from the list of Fundamental Rights.

The six types of Fundamental Rights of the constitution are as follows :

(1) Right to equality (Articles 14 to 18).—Articles 14 to 18 deal with right to equality. The Constitution clearly provides that the state shall not deny to any person equality before law or the equal protection of law within the territory of India. It cannot discriminate against any citizen on grounds of religion, race, caste, sex, and place of birth or any of them.

It means that every citizen has access to shops, public restaurants, hotels, place of public entertainment etc., and is free to use wells, tanks, roads and places of public resort maintained at state funds.

In the employment aspects, the appointment of offices under the state also equal opportunity shall be provided to all the citizens, and no person shall be denied employment on grounds of religion, race, caste, sex, descent, and place of birth, residence or any of them.

Again, to make the right to equality a reality; untouchability has been abolished and its practice in any form has been made an offence punishable in accordance with law. According to this article the business should provide equality before law, social equality and economic equality.

(2) Rights to freedom (Articles 19 to 22).—Articles 19 to 22 enumerate certain positive rights conferred by the Constitution in order to promote the ideal of liberty promised in the preamble. Six Fundamental Rights in the nature of "freedom" are guaranteed to the citizens in the article (originally there were seven, but now right to property is deleted).

The six "freedoms" are as follows :

(i) Freedom of speech and expression

(ii) Freedom of peaceful assembly without arms

(iii) Freedom of association

(iv) Freedom of movement throughout the territory of India

(v) Freedom to reside or settle any part of the territory

(vi) Freedom to practice any profession, or to carry on any occupation, trade or business.

The right to freedom is also applied equally in business. The businessmen can express their problems freely to the government and can get a solution to it. Similarly, every citizen has the right to choose any business or profession and can form unions, and conduct meetings.

(3) Right against exploitation (Articles 23 and 24).—Articles 23 and 24 deal with the right against exploitation and seek to prevent exploitation of weaker sections of society by unscrupulous persons as well as the state. Article 23 prohibits traffic in human beings, involuntary work without payment and other forms of forced labour. Article 24 prohibits the employment of children below 14 years of age in factories and hazardous occupations, employing women employees in night shifts in factories, etc.

Economic importance.—The economic importances of right against exploitation are :

(i) The government takes necessary steps to remove bonded labour.

(ii) The Factories Act help to prevent exploitation of women and children employees.

(iii) The owner of the factories are guided to make provision for safety and welfare of the workers and they compulsorily appoint a labour welfare officer, if there are more than 500 workers are employed.

(4) Right to freedom of religion (Articles 25 to 28).—Articles 25 to 28 deal with the right to freedom of religion. Subject to public order, morality, health, etc., the citizens enjoy freedom of conscience and are free to profess, practice and propagate any religion.

However, the state can regulate or restrict the economical, financial, political or other secular activities associated with religious practices. No citizen can be compelled to pay any taxes the proceeds of which are to be spent for the promotion or maintenance of any particular religion or religious domination.

Economic importance.—The economic importances of the right to freedom of religion are :

(i) The government cannot spend tax money for the development of any religion.

(ii) Nobody can be compelled to pay tax for the welfare of any specific religion.

(iii) No one shall be forced to transfer of property or any agreement of a business nature in the name of a particular religion.

(5) Cultural and Educational Rights (Articles 29 and 30).—Article 29 stipulates that the State shall not impose upon it any culture other than the community's own culture. A minority community has the right to preserve its culture and religious interests. Article 30 confers upon a minority community the right to establish and administer educational institutions of its choice.

A notable feature of the educational and cultural right is that unlike other fundamental rights, it is not subject to any restriction, except that the state can make special provisions for the advancement of any socially and educationally backward classes of citizens.

Economic importance.—The economic importances of cultural and educational rights are :

(i) The state does not discriminate to give economic assistance to the minority institutions.

(ii) The aided institution cannot refuse admission to any of the citizens on the ground that he/she belongs to a particular caste, religion, language or region.

(6) Rights to Constitutional Remedies (Article 32).—This right has been described by Dr. Ambedkar as the "heart and soul of the Constitution". In tact the mere declaration of fundamental rights is useless unless effective remedies are available for their enforcement. This has been ensured under Article 32, which grants the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by the Constitution.

Clause (2) of Article 32 confers power on the Supreme Court to issue appropriate directions or orders to writs, including writs in the name of *habeas corpus, mandamus,* prohibition, *quo-warranto* and *certiorari* for the enforcement of any of the rights conferred by Part III of the Constitution.

Thus, the fundamental rights enumerated in the constitution guarantee a number of economic and social lights to the citizens. At the same time the state has the power to impose reasonable restrictions on such rights in the interest of the people.

III. Directive Principles of State Policy

The Directive Principles of State Policy which have been enshrined in Part IV of the Constitution aim at realizing the high ideals of justice, liberty, equality and fraternity as outlined in the preamble to the Constitution.

The economic importances of Directive Principles of State Policy are :

(i) To provide adequate means of livelihood for all the citizens;

(ii) To secure equal pay for work to both men and women;

(iii) To protect the workers, especially children;

(iv) To regulate the economic system of the country that it does not lead to concentration of wealth and means of production;

(v) To make provision for securing right to work, to education and to public assistance in cases of unemployment, old age, sickness and similar other cases;

(vi) To ensure a decent standard of living and facilities of leisure for all workers.

The main objective of the above noted directive principles is to enable the individual to lead a good and satisfying life. All the provisions of directive principles of state policy guide the government policies towards the business and other economic and social activities.

The government also so far enacted a number of acts and laws, policies and rules keeping in view the directive principles, which are directly related with the business operations. The various acts like FERA, Factories Act, MRTP Act, Minimum Wages Act, Industrial (Development and Regulation) Act, Industrial Policy, etc., are based on the Directive Principles of the Constitution.

The government, through these acts and regulations, protects the interests of working men, women and children, prevents concentration of economic power, and promotes and protects the interest of small and cottage industries.

IV. Constitutional Provisions Regarding Trade, Commerce and Intercourse within the Territory of India

Articles 301 to 307 of Constitution of India deal with the constitutional provisions regarding Trade and Commerce. The framers of the Indian Constitution were fully conscious of the importance of maintaining the economic unity of the Union of India.

Free movement and exchange of goods throughout the territory of India was essential for the Economic Unity of the country which alone could sustain the progress of the country.

Prior to the integration of India and enforcement the new constitution there were in existence a large number of Indian states which in exercise of their sovereign powers, had created customs barriers between themselves and the rest of India, thus hindering at several points which constituted the boundaries of those Indian states, the free-flow of commerce.

Thus, the main object of Article 301 was obviously to encouraging the free-flow of stream of trade and commerce throughout the territory of India. The word "trade" means "buying" or "selling" of goods while the term "commerce" includes all forms of transportation such as by land, air or water.

The term "intercourse" means movement of goods from one place to another. Thus, the words "trade, commerce and intercourse" cover all kinds of activities which are likely to come under the nature of commerce.

Article 302 of Indian Constitution explains the power of Parliament to impose restrictions on trade, commerce and intercourse. The Parliament may by law impose it. Such restrictions on the freedom of trade, commerce or intercourse between one state and another or within any part of the territory of India, as may be required in the public interest.

Article 303 deals with the restrictions on the legislative powers of the Union and of the States with regard to trade and commerce. It provides that Parliament shall not have power to make any law giving any preference to any one state over another by virtue of any entry relating to trade and commerce in any one of the list in the VIIth Schedule.

But under Clause (2) of this article the Parliament may however, discriminate among states. If it is declared by a law that it is necessary to do so for the purpose of dealing with the situation arising from scarcity of goods in any part of the territory of India. The question whether there is a scarcity of goods in any part of India is for the Parliament to decide.

Article 304 explains State's power to regulate trade and commerce. The details, (a) impose on goods imported from other states (or the Union

Territories) any tax to which similar goods manufactured or produced in that state are subject. So, however, as not to discriminate between goods so imported and goods so manufactured or produced; and (b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that state as may be required in the public interest.

Article 305 saves existing laws and laws providing for state monopolies in so far as the president may by order otherwise direct. Article 307 empowers Parliament to appoint such authority as it considers appropriate for carrying out purposes of Articles 301, 302, 303 and 304. It can confer on such authorities such powers and duties as it thinks necessary.